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in opinion

cc: original & 1 cc Tax Commission
Leonard Hill, Comptroller
Robert O. Blood, M.D.

Thomas P. Cheney, Esq., City Solicitor, Laconia, enclosing ltr. to Bd. of Assessors
of Laconia from Tax Commission 5/28/58

June 25, 1958

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CONCORD, N.H.

Lawton B. Chandler, Secretary
State Tax Commission
Concord, New Hampshire

Dear Mr. Chandler:

This is in response to your letter of June 4, 1958, in which you request our opinion concerning the tax status of the real property standing in the name of New Hampshire Veterans, Inc., located at Weirs Beach, Laconia, New Hampshire. As appears from the file which you forwarded the matter was brought to your attention through the filing with the Commission of a copy of the exemption application as required by RSA 72:23-a (supp); and thereafter you notified the City of Laconia that the property in question might be subject to taxation. You stated as reason for your views in this regard that

"[t]his corporation is established only for the purpose of holding real estate. It is not a charitable or veterans' organization and therefore, in our opinion, is not entitled to exemption." (Your letter of May 28, 1958, to Board of Assessors of Laconia).

While we recognize the basis upon which the Commission has predicated its view, and while we acknowledge that the matter is not entirely free from doubt, we believe that the property for which exemption is sought has not changed its tax status by reason of its transfer from the New Hampshire Veterans' Association to New Hampshire Veterans, Inc. Whether it was tax exempt prior to the transfer depends upon action which may have been taken under the provisions of Laws 1881, c. 15, which reads as follows:

"Be it enacted . . . [t]hat the town of Laconia may, by a majority vote of the legal voters present and voting in any legal town-meeting, exempt from taxation any or all of the real and personal property of the New Hampshire Veterans' Association, located at the Weirs or elsewhere in said town . . ."

Mr. Lawton B. Chandler

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I am given to understand that the property of the Association has been deemed tax exempt over a long period of time. The question of the action taken by Laconia under the statute quoted is a factual one; but the treatment heretofore accorded the Association's property strongly suggests that the City long ago voted the exemption. If such be the case, then, consistently with the statement made above, we believe that the property continues to enjoy its tax exempt status, notwithstanding its transfer to New Hampshire Veterans, Inc.

The foregoing discussion is not to be taken as excluding the possibility that the exemption accorded the Association's property may have been based upon general statutes relating to charitable organizations. If this be so it would not alter the result reached herein.

An examination of the records of the Secretary of State shows that New Hampshire Veterans, Inc., was formed under Articles of Agreement dated January 7, 1956. Its purposes as set forth in the Articles of Agreement are as follows:

"Article 2. The objects for which this corporation is established are fraternal, patriotic and historical; to preserve and strengthen comradeship among its members; to perpetuate the memory and history of departed veterans; to foster true patriotism and maintain the institutions of American freedom; to hold title to, manage, control, mortgage, sell, convey or otherwise use or dispose of the real property and personal property of the New Hampshire Veterans Association, a corporation established by Act of the Legislature July 7, 1881."

Article 5 of the Articles of Agreement is likewise pertinent:

"The active and voting membership of this corporation shall at all times consist of and be confined to the active membership in good standing of said New Hampshire Veterans Association."

The final provision of the Articles of Agreement is as follows:

"Article 6. In the event of dissolution of this corporation, all of the assets shall become the property of said New Hampshire Veterans Association; and in the event of the prior or simultaneous dissolution of said New Hampshire Veterans' Association, then in that event only, title to all of the assets of this corporation shall become the property of the State of New Hampshire, to be used and expended by said State for charitable purposes and none other."

GENERAL AND SPECIAL INVESTIGATION
I am authorized to investigate any and all matters of the Department of Justice

Mr. Lawton B. Chandler

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These Articles were recorded with the Secretary of State of January 24, 1956.

I am advised that on February 9, 1956, New Hampshire Veterans' Association conveyed the property here under consideration to New Hampshire Veterans, Inc. See Belknap County Registry of Deeds, Book 369, Page 505. It is my understanding that this conveyance represented all of the real estate at Weirs Beach owned by the Association and, reciprocally, that the only property owned by New Hampshire Veterans, Inc., is that which passed under the conveyance.

Having in mind the charter of New Hampshire Veterans' Association as set forth in Laws 1881, c. 161, it becomes apparent upon an examination of the Articles of Agreement and upon a consideration of the action taken thereunder, that for all practical purposes New Hampshire Veterans' Association and New Hampshire Veterans, Inc., are one in substance. The theory which recognizes that there exist two corporate entities has little practical consequence in New Hampshire where the Court has firmly adopted the philosophy that substance, not form, governs in matters relating to the corporate creature, and that, accordingly, the law will examine into the facts behind the technical facade in order to achieve just and reasonable results.

It is to be noted in passing that the Legislature itself appears to have recognized the practical identity between the two organizations. During the 1957 Session - well over a year after the conveyance described above - there was appropriated for each of the fiscal years in the biennium ending June 30, 1959, the sum of \$1,500

"for the New Hampshire Veterans Association for the purpose of repairs and maintenance of the buildings and grounds of said Association at the Weirs."
Laws 1957, c. 329.

In all of the circumstances, we believe that the property under consideration is to be treated as property of New Hampshire Veterans' Association for the purpose of Laws 1881, chapter 15, and action taken thereunder.

Your file is returned.

Very truly yours,

Warren E. Waters
Deputy Attorney General

WEW/aml
Encl.